

## § 1979.112

(b) The Assistant Secretary may withdraw his or her findings or a preliminary order at any time before the expiration of the 30-day objection period described in §1979.106, provided that no objection has yet been filed, and substitute new findings or preliminary order. The date of the receipt of the substituted findings or order will begin a new 30-day objection period.

(c) At any time before the findings or order become final, a party may withdraw his or her objections to the findings or order by filing a written withdrawal with the administrative law judge or, if the case is on review, with the Board. The judge or the Board, as the case may be, will determine whether the withdrawal will be approved. If the objections are withdrawn because of settlement, the settlement shall be approved in accordance with paragraph (d) of this section.

(d)(1) *Investigative settlements.* At any time after the filing of a complaint, and before the findings and/or order are objected to or become a final order by operation of law, the case may be settled if the Assistant Secretary, the complainant and the named person agree to a settlement.

(2) *Adjudicatory settlements.* At any time after the filing of objections to the Assistant Secretary's findings and/or order, the case may be settled if the participating parties agree to a settlement and the settlement is approved by the administrative law judge if the case is before the judge, or by the Board if a timely petition for review has been filed with the Board. A copy of the settlement shall be filed with the administrative law judge or the Board, as the case may be.

(e) Any settlement approved by the Assistant Secretary, the administrative law judge, or the Board, shall constitute the final order of the Secretary and may be enforced pursuant to §1979.113.

## § 1979.112 Judicial review.

(a) Within 60 days after the issuance of a final order by the Board under §1979.110, any person adversely affected or aggrieved by the order may file a petition for review of the order in the United States Court of Appeals for the circuit in which the violation allegedly

## 29 CFR Ch. XVII (7–1–06 Edition)

occurred or the circuit in which the complainant resided on the date of the violation. A final order of the Board is not subject to judicial review in any criminal or other civil proceeding.

(b) If a timely petition for review is filed, the record of a case, including the record of proceedings before the administrative law judge, will be transmitted by the Board to the appropriate court pursuant to the rules of the court.

## § 1979.113 Judicial enforcement.

Whenever any person has failed to comply with a preliminary order of reinstatement or a final order or the terms of a settlement agreement, the Secretary or a person on whose behalf the order was issued may file a civil action seeking enforcement of the order in the United States district court for the district in which the violation was found to have occurred.

## § 1979.114 Special circumstances; waiver of rules.

In special circumstances not contemplated by the provisions of this part, or for good cause shown, the administrative law judge or the Board on review may, upon application, after three days notice to all parties and interveners, waive any rule or issue any orders that justice or the administration of the Act requires.

## PART 1980—PROCEDURES FOR THE HANDLING OF DISCRIMINATION COMPLAINTS UNDER SECTION 806 OF THE CORPORATE AND CRIMINAL FRAUD ACCOUNTABILITY ACT OF 2002, TITLE VIII OF THE SARBANES-OXLEY ACT OF 2002

### Subpart A—Complaints, Investigations, Findings and Preliminary Orders

#### Sec.

- 1980.100 Purpose and scope.
- 1980.101 Definitions.
- 1980.102 Obligations and prohibited acts.
- 1980.103 Filing of discrimination complaint.
- 1980.104 Investigation.
- 1980.105 Issuance of findings and preliminary orders.

## Occupational Safety and Health Admin., Labor

## § 1980.102

### Subpart B—Litigation

- 1980.106 Objections to the findings and the preliminary order and request for a hearing.
- 1980.107 Hearings.
- 1980.108 Role of Federal agencies.
- 1980.109 Decision and orders of the administrative law judge.
- 1980.110 Decision and orders of the Administrative Review Board.

### Subpart C—Miscellaneous Provisions

- 1980.111 Withdrawal of complaints, objections, and findings; settlement.
- 1980.112 Judicial review.
- 1980.113 Judicial enforcement.
- 1980.114 District Court jurisdiction of discrimination complaints.
- 1980.115 Special circumstances; waiver of rules.

AUTHORITY: 18 U.S.C. 1514A; Secretary of Labor's Order No. 5-2002, 67 FR 65008 (October 22, 2002).

SOURCE: 69 FR 52113, Aug. 24, 2004, unless otherwise noted.

### Subpart A—Complaints, Investigations, Findings and Preliminary Orders

#### § 1980.100 Purpose and scope.

(a) This part implements procedures under section 806 of the Corporate and Criminal Fraud Accountability Act of 2002, Title VIII of the Sarbanes-Oxley Act of 2002 (“Sarbanes-Oxley” or “Act”), enacted into law July 30, 2002. Sarbanes-Oxley provides for employee protection from discrimination by companies and representatives of companies because the employee has engaged in protected activity pertaining to a violation or alleged violation of 18 U.S.C. 1341, 1343, 1344, or 1348, or any rule or regulation of the Securities and Exchange Commission, or any provision of Federal law relating to fraud against shareholders.

(b) This part establishes procedures pursuant to Sarbanes-Oxley for the expeditious handling of discrimination complaints made by employees, or by persons acting on their behalf. These rules, together with those rules codified at 29 CFR part 18, set forth the procedures for submission of complaints under Sarbanes-Oxley, investigations, issuance of findings and preliminary orders, objections to findings

and orders, litigation before administrative law judges, post-hearing administrative review, and withdrawals and settlements.

#### § 1980.101 Definitions.

*Act* means section 806 of the Corporate and Criminal Fraud Accountability Act of 2002, Title VIII of the Sarbanes-Oxley Act of 2002, Public Law No.107-204, July 30, 2002, codified at 18 U.S.C. 1514A.

*Assistant Secretary* means the Assistant Secretary of Labor for Occupational Safety and Health or the person or persons to whom he or she delegates authority under the Act.

*Company* means any company with a class of securities registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78l) and any company required to file reports under section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(d)).

*Company representative* means any officer, employee, contractor, subcontractor, or agent of a company.

*Complainant* means the employee who filed a complaint under the Act or on whose behalf a complaint was filed.

*Employee* means an individual presently or formerly working for a company or company representative, an individual applying to work for a company or company representative, or an individual whose employment could be affected by a company or company representative.

*Named person* means the employer and/or the company or company representative named in the complaint who is alleged to have violated the Act.

*OSHA* means the Occupational Safety and Health Administration of the United States Department of Labor.

*Person* means one or more individuals, partnerships, associations, corporations, business trusts, legal representatives or any group of persons.

*Secretary* means the Secretary of Labor or persons to whom authority under the Act has been delegated.

#### § 1980.102 Obligations and prohibited acts.

(a) No company or company representative may discharge, demote, suspend, threaten, harass or in any other manner discriminate against any